IN THE

Supreme Court of the United States

OCTOBER TERM, 1952—No. ~~21 Misc.~~ 393

CALMAN COOPER,

Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

REPLY BRIEF OF PETITIONER CALMAN COOPER

The petitioner Cooper desires to avoid burdening this Honorable Court with legal arguments, applicable both to him and to petitioner Stein, and already ably expressed in Stein's brief, submitted to this Court, simultaneously herewith, in answer to the respondent's brief.

We desire to reply, however, to some of the respondent's misleading contentions which particularly concern petitioner Cooper.

In our petition and brief we branded and proved the testimony of Sgt. Sayers—who sought to account for Cooper's injuries, noted by Dr. Vosburgh and by petitioner's three attorneys—to be a clumsy fabrication, concocted in a desperate attempt to deceive the jury and our courts (pp. 31-33). Sgt. Sayers' mendacious explanation is repeated by respondent in its brief on page 15, as follows:

> "After identifying himself and his companions as police officers, Sergeant Sayers ordered Cooper to take his hand out of his pocket. Sergeant Sayers felt an object in Cooper's pocket. Cooper refused. Sergeant Sayers then grabbed Cooper by both arms, and as

> Cooper started to wheel around, Sayers threw Cooper against the building which had a cement wall and then took Cooper into custody (1311)."

At page 30 the respondent further states that "Sergeant Sayers said he had thrown Cooper against a wall hard because he believed his hand held a weapon in his pocket."

Now let us look at Sayers' actual testimony (1311):

> "I walked up to Cooper, told him we were police officers, ordered him to take his hand out of his right-hand coat pocket, and when he failed to comply I put my hand on his coat pocket; there was an object in there but it was not what I was looking for, and with that I took him and grabbed him by both arms," etc.

This Court will note that Sayers put his hand on Cooper's coat pocket, ascertained that there was an object in there, but it was not what Sayers was looking for.

What was that object in Cooper's right-hand pocket, for which he admittedly was not looking? None other than a black notebook (1332).

Sayers, therefore, knew, from having placed his hand into Cooper's pocket, that Cooper had only a notebook, and not a weapon. He therefore had no reason to push or throw Cooper against the wall. He merely created this "violent" episode in an attempt to explain the injuries seen on Cooper four days later by Dr. Vosburgh and others.

We criticize respondent's summary of Sayers' testimony as misleading for omitting the important fact that Cooper had only a harmless note-book in his pocket, which fact Sayers easily ascertained *before* he allegedly pushed Cooper against the wall *once* (1332). The summary is cleverly worded to give this Court the false impression that Sayers thought that Cooper had a weapon in his pocket.

We do not rest our argument alone on an analysis which must appeal to our reason. We reinforce it by Jepperson's testimony—the People's own witness—who, as we pointed out in our main brief, gave Sayers the lie (Cooper's Brief, pp. 31-32).

Respondent, on page 14 of its Brief, strongly vouches for the character and integrity of Jepperson.

We respectfully submit the actual testimony of this witness, concerning this alleged incident, as developed by *District Attorney Fanelli himself* (810):

> "Q. When the police picked you up with Calman Cooper, did you see what the police did with Calman Cooper on 120th Street on the 5th of June last? A. *Told* him to get up against the wall, and he had his hands up and they searched him.
>
> Q. Did they *push* him up against the wall? A. *I wouldn't say that.*
>
> Q. Did you see it? A. No. *I wouldn't say they pushed him;* they *asked* him against the wall and he put his hands up." (Emphasis ours.)

Nowhere in the Respondent's Brief is there a single word by which the District Attorney seeks to explain away Jepperson's testimony which flatly proves the falsity of Sayers' explanation.

At page 15 of Respondent's Brief appears the following misleading paragraph:

> "The extent of any injuries that Cooper may have sustained during this violent episode at the time of his arrest is unknown".

Unknown?

Jepperson's testimony shows there could be none. Dr. Vosburgh's testimony shows Cooper's injuries cannot be accounted for by Sayers' imaginary "violent episode".

The testimony of Dr. Vosburgh shows that Cooper's injuries could not be a week old, could possibly be six days old (1246), and could have been inflicted on June 5—that is, they could be four days old, (1247-1248). His testimony, therefore, proves that they were inflicted while Cooper was in police custody, for, on cross examination by the District Attorney, he testified that only "some of the injuries" could be accounted for by the fact that Cooper was allegedly thrown against a stone wall by a police officer (1246-1248)—an explanation by Sayers, the falsity of which we clearly showed in our brief (pp. 32-33).

Sayers testified that he pushed Cooper *only once*. Dr. Vosburgh swore that the injuries he found on Cooper could have been caused only "by being thrown against a stone wall *numerous times*" (1253).

We submit the question put by defense Counsel to Dr. Vosburgh and his answer thereto (1253):

> "Q. How can any person strike a stone wall and get bruises on both buttocks, the left posterior lateral chest area and the abdomen and the right bicep area—point out to the jury that by being thrown against a stone wall, it can produce all those bruises? A. By being thrown against a stone wall *numerous* times." (Emphasis ours.)

Thus Dr. Vosburgh the jail physician, and Jepperson, respondent's own "honest business man" (Respondent's Brief, p. 14), utterly revealed the falsity of Sayers' testimony.

Cooper contends that he was held incommunicado (Petitioner's Brief, p. 18). How does Respondent meet that challenge? By pointing out that Reardon, no less, Reardon of the Parole Board, spoke to Cooper!

Reardon was not a neutral witness. Reardon was a frequent visitor at the Police Barracks (1441). Reardon had visited the barracks on Monday night and never spoke to or saw Cooper that night (1441). He was there solely as an arm of the prosecuting authorities (1441). Reardon's presence, therefore, does not, as stated by Respondent, negative petitioner's contention that he was held incommunicado (Respondent's Brief, p. 20).

Further at page 20, the Respondent points out that "Reardon declared that at this time (Tuesday night), Cooper did not complain to him that he had been beaten or threatened" (1449).

What a distorted impression that gives to this Court. A fair statement would have been that Cooper did not complain at the barracks to Reardon, in the presence of State Troopers, because Reardon, as we pointed out in our main brief, never saw, and never spoke to Cooper alone, but always in the presence of one or more State Troopers (1442, 1443, 1464).

The Trial Record shows the following (1464):

"Q. You never saw this defendant alone there? A. No.

Q. In the barracks? A. No.

Q. There was always some state trooper present? A. Yes.

Q. You never asked permission to speak to Cooper alone so that you could ask him whether he had been beaten by the state troopers, did you? A. No.

Q. You never did that? A. No.

Q. You were, therefore, in no position to state that he was never beaten and never intimidated, isn't that a fact? A. I did not make any such statement.

Q. Well, you did testify that these confessions are voluntary in substance and effect? A. Yes.

Q. Now, isn't it the truth that you are in no position whatever to state whether this defendant was beaten before you saw him, and whether, when you spoke to him, there was not a continuing fear upon this defendant through the presence of armed policemen, isn't that a fact? A. I can only testify to what I saw and heard."

And again at page 21, the Respondent states that "Reardon noticed no wounds, cuts or bruises and Cooper did not complain that he had been mistreated, threatened or beaten", on the evening of June 6 (1449). Of course Reardon did not notice any. A reading of Dr. Vosburgh's record (2971) and of Mr. Todarelli's detailed testimony of what he saw (1260-62) shows that none of the injuries complained of were on parts of Cooper's body that were visible to anyone, unless Cooper removed his clothing, which of course, Reardon never asked Cooper to do (1442, 1480).

Reardon came, not as a friend of Cooper, but, as his conduct showed, as a helper of the State Police.

The Respondent, unable to answer Cooper's analysis of the worthlessness of Reardon's testimony concerning the voluntariness of Cooper's confession, ignores the strictures detailed by us, and trusts to silence and evasion to come to their rescue (Cooper's Brief, pp. 29-31).

The failure of the Respondent to answer pointed questions in our brief is a most eloquent admission that Cooper's confession was clearly extorted.

Nowhere in the Respondent's Brief is there an answer seeking to justify the conduct of the District Attorney and his assistants—a conduct of avoidance and evasion of specific charges made on June 10 by telephone and telegram (Cooper's Brief, pp. 25-31). Nowhere is there an

answer justifying their refusal to have another Doctor examine Cooper, when the charge was specifically made on June 10, that Dr. Vosburgh's record did not show "true extent of injuries" Cooper received (2973).

The District Attorney himself, by refusing to have another doctor examine Cooper on June 10, created the necessity for the testimony of Mr. Todarelli, associated with the defense, to prevent a miscarriage of justice on an important issue.

Nowhere does the District Attorney justify his opposition to a medical examination of Cooper when the Defense requested it on June 13, before Judge Gallagher.

Nowhere does the District Attorney answer our proof that he showed utter disregard of our charges, and failed to seek verification of their truth or falsity, because, as he and the troopers well knew, as shown by the convincing proof in this record, the charges were indeed well founded.

The respondent's brief is replete with distortions and half-truths; but it would serve no purpose to list and answer all of them.

We shall list one more, however. On page 43, respondent states that "there is no proof in this record that either Cooper, Stein or Wissner were questioned in relays."

There is absolutely no excuse for such a brazen distortion and deception in a brief before this Honorable Court. We respectfully refer to our main brief (pp. 17-18), where, with page references, we list the relay participants, Sgt. Barber, Sgt. Sayers and Trooper Buon, the three of whom questioned Cooper in turn on Monday and Tuesday, repeatedly.

There was in law no issue of fact as to the legality of the confession to submit to a jury, for it was clearly barred under our constitutional guarantees.

This Court cannot, we respectfully submit, overlook the positive proof that Cooper's confession was extorted, and give, by implication, its stamp of approval to the methods by which it was illegally obtained.

Respectfully submitted,

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Dated, October 2, 1952.